

SPE RESPONSE FOR CERTIFICATE OF CORRECTION

Paper No.: X

DATE : June 05, 2008TO SPE OF : ART UNIT 1796SUBJECT : Request for Certificate of Correction for Appl. No.: 10/688999 Patent No.: 7338535 B2

A response is requested with respect to a request for a certificate of correction.

With respect to the change(s) requested to correct Office and/or Applicant's errors, should the patent read as shown in the certificate of correction attached herewith or the COCIN document(s), in IFW images for the above-identified patented application? No new matter should be introduced, nor should the scope or meaning of the claims be changed.

If the response is for an IFW, within 7 days, please complete and forward the response to the employee (named below) via scanning into application images, using document code **COCX**.

DO NOT SENT TO ATTORNEY

If the response is for a paper file wrapper, please complete the response and forward the response with the paper file wrapper, to the employee (named below), within 7 days, to:

Certificates of Correction Branch (CofC)

South Tower - 9A22

Palm Location 7580

You can fax the Director's SPE response to 571-272-9090

LAMONTE NEWSOME

Certificates of Correction Branch

703-308-9390 ext. 112

Thank You For Your Assistance

The request for issuing the above-identified correction(s) is hereby:

Note your decision on the appropriate box.

☐ Approved

All changes apply.

☒ Approved In Part

Specify below which changes do not apply.

☐ Denied

State the reasons for denial below.

Comments:

The examiner would like to point out that the change regarding the Patent Term Extension or Adjustment determination on the title page should be directed to the Office of Patent Legal Administration at (571) 272-7702. Thanks.



SPE

1796

Art Unit



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
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Alexandria, VA 22313-1450
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901 NEW YORK AVENUE, NW
WASHINGTON DC 20001-4413

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DEC 08 2008

OFFICE OF PETITIONS

| | | |
|---------------------------------|---|---------------------------|
| In re Patent No. 7,338,535 | : | |
| PLOS et al. | : | LETTER REGARDING PATENT |
| Issued: March 4, 2008 | : | TERM ADJUSTMENT AND |
| Application No. 10/688,999 | : | NOTICE OF INTENT TO ISSUE |
| Filed: October 21, 2003 | : | CERTIFICATE OF CORRECTION |
| Attorney Docket No. 06028.0030- | : | |
| 00000 | : | |

This letter is in response to the "REQUEST FOR CERTIFICATE OF CORRECTION," filed April 18, 2008. Pursuant to patentees' duty of good faith and candor to the Office, patentees request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is **granted**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised patent term adjustment of **zero (0) days**.

On March 4, 2008, the above-identified application matured into U.S. Patent No. 7,338,535, with a revised patent term adjustment of 79 days. On April 18, 2008, patentees submitted the instant comment.

Patentees assert that the determination of patent term adjustment of 79 day is incorrect and should be corrected to zero (0) days. Patentees aver that the Office failed to assess

applicants any delay for the filing of the Request for Continued Examination (RCE) and the request for an extension of time within the third month on March 19, 2007.¹

The application history has been reviewed and it has been determined that the determination of patent term adjustment under 35 U.S.C. 154(b) of 79 days is incorrect.

A final Office action was mailed on September 19, 2006. Applicants filed their response in the form of a RCE and a request for an extension of time within the third month on March 19, 2007, in excess of the three-month period from the mailing date of the final Office action. See 37 CFR 1.704(b). Thus, applicants failed to engage in reasonable efforts to conclude prosecution of this application. The period of adjustment should have been reduced by 90 days, the number of days in the period beginning on the day after the date that is three months after the date of mailing of the final Office action, December 20, 2006, ending on the date the reply was filed, March 19, 2007. See 37 CFR 1.704(b). Accordingly, a period of reduction of 90 days will be entered.

In view thereof, the patent should have issued with a revised patent term adjustment of **zero (0) days** (286 days of Office delay - 297 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in patentees' favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks patentees for their good faith and candor in bringing this to the attention of the Office.

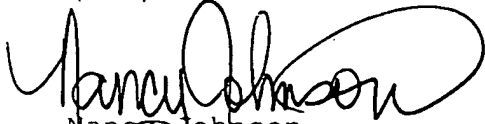
This matter is being referred to the Certificate of Correction Branch for issuance of a certificate of correction to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **zero (0) days**.

¹ The PALM records incorrectly reflect the filing date of the RCE and the request for an extension of time for response within the third month as March 18, 2007, instead of March 19, 2007.

Patent No. 7,338,535
Application No. 10/688,999

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Telephone inquiries specific to this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

Day : Friday
Date: 12/5/2008

PALM INTRANET

Time: 17:02:46

| PTA Calculations for Application: 10/688999 | | | | | |
|---|--|------------|-------------------------|--|-----|
| Application Filing Date: | | 10/21/2003 | PTO Delay (PTO): | | 286 |
| Issue Date of Patent: | | 03/04/2008 | Three Years: | | 0 |
| Pre-Issue Petitions: | | 0 | Applicant Delay (APPL): | | 207 |
| Post-Issue Petitions: | | 0 | Total PTA (days): | | 0 |
| PTO Delay Adjustment: | | -90 | | | |

| File Contents History | | | | | |
|-----------------------|------------|---|-----|------|-------|
| Number | Date | Contents Description | PTO | APPL | START |
| 69 | 12/05/2008 | ADJUSTMENT OF PTA CALCULATION BY PTO | | 90 | |
| 64.5 | 02/13/2008 | PTA 36 MONTHS | | | |
| 64 | 03/04/2008 | PATENT ISSUE DATE USED IN PTA CALCULATION | | | |
| 63 | 01/17/2008 | EXPORT TO FINAL DATA CAPTURE | | | |
| 62 | 01/16/2008 | DISPATCH TO FDC | | | |
| 61 | 01/16/2008 | APPLICATION IS CONSIDERED READY FOR ISSUE | | | |
| 60 | 01/09/2008 | RESPONSE TO REASONS FOR ALLOWANCE | | | |
| 59 | 01/09/2008 | ISSUE FEE PAYMENT VERIFIED | | | |
| 58 | 01/09/2008 | ISSUE FEE PAYMENT RECEIVED | | | |
| 57 | 12/04/2007 | FINISHED INITIAL DATA CAPTURE | | | |
| 56 | 10/22/2007 | EXPORT TO INITIAL DATA CAPTURE | | | |
| 55 | 10/17/2007 | MAIL NOTICE OF ALLOWANCE | | | |
| 54 | 10/11/2007 | ISSUE REVISION COMPLETED | | | |
| 53 | 10/11/2007 | DOCUMENT VERIFICATION | | | |
| 52 | 10/11/2007 | NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED | | | |
| 51 | 10/10/2007 | NOTICE OF ALLOWABILITY | | | |
| 50 | 10/05/2007 | CASE DOCKETED TO EXAMINER IN GAU. | | | |
| 49 | 09/20/2007 | AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED | | | |
| 48 | 09/22/2007 | DATE FORWARDED TO EXAMINER | | | |
| 47 | 09/20/2007 | RESPONSE AFTER NON-FINAL ACTION | | 89 | 45 |
| 46 | 09/20/2007 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 45 | 03/23/2007 | MAIL NON-FINAL REJECTION | | | |
| | | | | | |

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|------|------------|--|--|----|----|
| 44 | 03/20/2007 | NON-FINAL REJECTION | | | |
| 43 | 03/20/2007 | DATE FORWARDED TO EXAMINER | | | |
| 42 | 03/18/2007 | AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE | | | |
| 41 | 03/20/2007 | DATE FORWARDED TO EXAMINER | | | |
| 40 | 03/18/2007 | REQUEST FOR CONTINUED EXAMINATION (RCE) | | | |
| 39 | 03/20/2007 | DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA) | | | |
| 38 | 03/18/2007 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 37 | 03/18/2007 | AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED | | | |
| 36 | 03/19/2007 | WORKFLOW - REQUEST FOR RCE - BEGIN | | | |
| 35 | 09/19/2006 | MAIL FINAL REJECTION (PTOL - 326) | | | |
| 34 | 09/16/2006 | FINAL REJECTION | | | |
| 33 | 08/21/2006 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |
| 32 | 08/30/2006 | DATE FORWARDED TO EXAMINER | | | |
| 31 | 08/21/2006 | RESPONSE AFTER NON-FINAL ACTION | | 31 | 24 |
| 30 | 08/21/2006 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 29 | 08/21/2006 | AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED | | | |
| 28 | 08/21/2006 | REFERENCE CAPTURE ON IDS | | | |
| 27.7 | 08/21/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 27 | 08/21/2006 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 26 | 08/21/2006 | REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED) | | | |
| 25 | 08/21/2006 | REQUEST FOR FOREIGN PRIORITY (PRIORITY PAPERS MAY BE INCLUDED) | | | |
| 24 | 04/21/2006 | MAIL NON-FINAL REJECTION | | | |
| 23 | 04/17/2006 | NON-FINAL REJECTION | | | |
| 22 | 08/19/2005 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |
| 21 | 10/21/2003 | INFORMATION DISCLOSURE STATEMENT CONSIDERED | | | |
| 20 | 04/06/2006 | DATE FORWARDED TO EXAMINER | | | |
| 19 | 03/31/2006 | RESPONSE TO ELECTION / RESTRICTION FILED | | 87 | 17 |

| | | | | | |
|------|------------|---|-----|--|----|
| 18 | 03/31/2006 | REQUEST FOR EXTENSION OF TIME - GRANTED | | | |
| 17 | 10/03/2005 | MAIL RESTRICTION REQUIREMENT | 286 | | -1 |
| 16 | 09/29/2005 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 15.7 | 08/19/2005 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 15 | 08/19/2005 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 14 | 04/08/2005 | CORRESPONDENCE ADDRESS CHANGE | | | |
| 13 | 02/06/2004 | IFW TSS PROCESSING BY TECH CENTER COMPLETE | | | |
| 12 | 02/06/2004 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 11 | 02/06/2004 | REFERENCE CAPTURE ON IDS | | | |
| 10.7 | 10/21/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 10 | 10/21/2003 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
| 9 | 01/22/2004 | APPLICATION IS NOW COMPLETE | | | |
| 8 | 01/22/2004 | APPLICATION RETURN FROM OIPE | | | |
| 7 | 01/22/2004 | APPLICATION RETURN TO OIPE | | | |
| 6 | 01/21/2004 | APPLICATION DISPATCHED FROM OIPE | | | |
| 5 | 01/22/2004 | APPLICATION IS NOW COMPLETE | | | |
| 4 | 01/15/2004 | CLEARED BY OIPE CSR | | | |
| 3 | 01/15/2004 | CASE CLASSIFIED BY OIPE | | | |
| 2 | 12/17/2003 | IFW SCAN & PACR AUTO SECURITY REVIEW | | | |
| 1 | 10/21/2003 | INITIAL EXAM TEAM NN | | | |

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,338,535 B2

DATED : Mar. 4, 2008

INVENTOR(S) : Plos et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (79) days

Delete the phrase "by 79 days" and insert – by 0 days--